

In the United States Bankruptcy Court

for the

Southern District of Georgia

Savannah Division

FILED

at 3 O'clock & 40 min. P.M.

Date 3-10-94

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia

In the matter of:

KEY AIRLINES, INC.

Debtor

)  
)  
)  
)  
)

Chapter 7 Case

Number 93-40226

**ORDER ON MOTION FOR ORDER REQUIRING PAYMENT**  
**BY TOWER INTERNATIONAL, INC.,**  
**OF CERTAIN EXPENSES OF KEY AIRLINES, INC.**

By virtue of previous orders of this Court dated July 3, 1993, July 27, 1993, and September 13, 1993, Tower International, Inc., a potential purchaser of the Debtor, Key Airlines, Inc., entered into consent agreements which were made orders of this Court requiring it to pay, in essence, one-half of the accruing expenses incurred by Key Airlines during the period of negotiations leading up to what was then anticipated to be approval of an acquisition agreement. Debtor alleges that Tower has not fulfilled the terms of that obligation and a hearing to consider Debtor's Motion requiring Tower to pay those funds over to the Chapter 7 Trustee was heard on January 31, 1994. At that time the evidence revealed that Tower owed a minimum of \$11,531.77 for the period covered by the July 3 Order and had paid the sum of

\$15,000.00. I therefore conclude that Tower is not obligated at this point for payment of any additional expenses for that period. For the period of time covered by the September 13 Order, Tower was required to pay the sum of \$12,500.00 and had only remitted the sum of \$10,000.00 leaving a balance due of \$2,500.00. Tower asserts in response to the Motion that Debtor had not actually incurred expenses in excess of \$5,927.20 for that period and therefore asserts that its \$10,000.00 payment should be sufficient to fulfill its obligations. However, because the terms of the Order required Tower to deposit the sum of \$12,500.00 against which expenses would be paid, I ruled from the bench at the close of the hearing and memorialize the ruling herein that Tower is obligated to remit the balance due of \$2,500.00 while retaining the right to seek reimbursement from the Chapter 7 Trustee if appropriate. Finally, pursuant to the terms of the July 27, 1993, Order, evidence revealed that \$37,500.00 in expenses was incurred, of which Tower would be obligated to pay one-half or \$18,750.00. Tower remitted no money pursuant to the terms of that Order in its own name. However, it claims credit of \$12,500.00 which was deposited to the Debtor's account by Tim Howe, formerly an officer of Key Airlines and at all times relevant to this case a shareholder in Savannah Aviation Group ("SAG") which owns Key Airlines.

The Court takes judicial notice of the testimony of Tim Howe given at

a hearing on August 30, 1993, in which a Motion to hold Mr. Howe and others in contempt was filed by a creditor of Key Airlines. During Mr. Howe's testimony he admitted that he had diverted \$40,000.00 of Key Airlines' funds for purposes not material to this Order. He further testified that when the diversion of these funds was called to his attention and a demand for repayment was made by Key that he caused the sum of \$52,500.00 to be deposited to the Key account which represented the \$40,000.00 previously diverted and \$12,500.00 which he characterized as "Tower's money". Tower claims that this \$12,500.00 should be credited against its obligation under the July 27 Order. However, Mr. Howe further testified at that time that the Tower money came from him personally and was not paid by Tower. In further explanation he stated that SAG owed an obligation to Tower International and that the sum of \$12,500.00 deposited into the Key account was deposited from his funds in order to reimburse Tower for that SAG obligation.

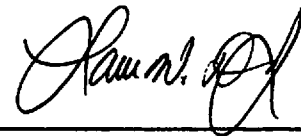
Taking further judicial notice of proceedings in this case, there has previously been testimony that under the terms of the purchase of Key Airlines by SAG from an entity known as WorldCorp, SAG obligated itself to pay substantial sums of money over to Key Airlines as a contribution to capital with which Key could more successfully operate. Previous testimony further revealed that while SAG has remitted

a portion of these sums, a substantial amount of the sums required to be paid by SAG to Key in the WorldCorp agreement have not been remitted. In this context, I am unable to conclude that monies paid from Mr. Howe's personal funds which he characterized as satisfying an obligation of SAG to Tower but which went to the Key account can properly be credited to Tower. It is just as credible to conclude that the \$12,500.00 should be characterized as a partial fulfillment of SAG's additional obligations to pay capital into Key Airlines in order to assist it in operating successfully. In other words, the July 27 Order required Tower to make certain payments and Tower on the face of the record has made no such payment. There is no competent evidence from which I conclude at this point that a payment made on behalf of SAG, another entity obligated to Key, should in fact be credited to Tower instead of SAG. As a result I conclude that Tower is obligated pursuant to the terms of the July 27 Order to remit the sum of \$18,750.00.

IT IS THEREFORE ORDERED that Tower International, Inc., remit, instant, the sum of \$21,250.00 to the Chapter 7 Trustee. The Trustee is directed at his earliest practicable opportunity to audit the records of the Debtor corporation for the entire period in question and assess the full extent of operating expenses which were paid or incurred by Key Airlines and make any further recommendation which

the Trustee may be in a position to make regarding whether Tower's obligations have been completely fulfilled or whether, by virtue of the payment required by Tower in this Order, Tower has overpaid its obligation. If Tower is dissatisfied with the subsequent determination of the Trustee on this point, Tower is reserved the right to hereafter file whatever adversary proceeding it may be entitled to bring to obtain a refund of monies paid under the requirements of the three previous Orders of this Court or this Order which it contends constitutes an overpayment of its obligations.

IT IS FURTHER ORDERED that should Tower fail to pay the sums of money required by this Order within ten (10) days from the date of entry hereof, its failure to do so will be considered grounds for a citation holding Tower and its principals in contempt of Court, which act, if hereafter determined to be contemptuous, will be sanctioned to the full extent of the law.



---

Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 9<sup>th</sup> day of March, 1994.